



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Kent R. Van Kampen et al

Serial No.: 09/689,621

Filed: October 13, 2000

For: The Treatment of Dermal Tumors, Warts,  
and Viral Infections of the Respiratory  
Tract in Humans Using Heat-Killed  
P. Acnes

Group Art Unit: 1651

Examiner:

RENEWED PETITION  
FOR FILING BY OTHER THAN ALL THE INVENTORS UNDER  
37 C.F.R. 1.47(a)

RECEIVED

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

DEC 10 2001  
OFFICE OF PETITIONS

Dear Sir:

Applicant, Dr. Kent R. Van Kampen, hereby renews his petition to the Commissioner to accept the filing of the above-identified U.S. Patent Application by other than all of the inventors. This petition is renewed due to the additional evidence that has become available to Applicant which provides further documentation of the refusal of Mr. Bobby Gene Edwards to file a joint application.

Applicant has repeatedly contacted the co-inventor, Bobby Gene Edwards, to file a joint application, to no avail. Attorney for Applicant has also communicated with Mr. Edwards, whose actions and express written statement indicate his refusal to join in the application. The reasons given by Mr. Edwards for refusing to sign the Declaration include not receiving a telephone call from Dr. Van Kampen and the desire for indemnification and financial incentives. In view of Mr. Edwards' refusal to execute the papers required for filing the present patent application, Dr. Van Kampen is believed to be entitled to make such application on behalf of and as agent for Mr. Edwards.

An amended and newly executed affidavit by Brian Laurenzo, Attorney for Applicant, along with exhibits evidencing the statements made in the affidavit, are attached hereto providing additional proof of the pertinent facts concerning the refusal of the co-inventor to sign the present patent application.

The name of the co-inventor refusing to join in this application and the last known addresses where the co-inventor customarily receives mail are as follows:

Mr. Bobby Edwards  
Neo-Tech, LLC  
10061 Hwy 22  
Dresden, TN 38225  
(work address)

Mr. Bobby Edwards  
9930 Hwy 22  
Dresden, TN 38225  
(home address)

Mr. Bobby Edwards  
19488 FM 2115  
Salado, TX 76571  
(home address)

The required fee pursuant to § 1.17 (h) is enclosed.

Date: 10/25/01

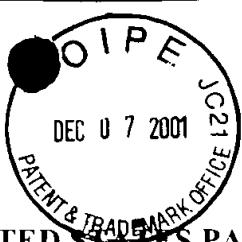
Respectfully Submitted,

By: Brian J. Laurenzo  
Brian J. Laurenzo, Reg. No. 34,207  
Dorsey & Whitney LLP  
801 Grand Avenue, Suite 3900  
Des Moines, Iowa 50309  
(515) 283-1000 Telephone  
(515) 283-1060 Facsimile  
Attorney for Applicant

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OFFICE OF PETITIONS



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In re Application of:

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P. Acnes

Group Art Unit: 1651

Examiner:

01/29/2002 AKELLEY 00000031 041420 09689621

01 FC:116 205.00 CH 195.00 CR REQUEST FOR RECONSIDERATION OF PETITION  
UNDER 37 C.F.R. 1.47(a)

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DEC 1 0 2001

OFFICE OF PETITIONS

Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

Refugee Ref: 04/08/2002 AKELLEY 0014581500  
1281041420 File Number: 09689621  
12/10/2001 12/10/2001  
Dear Sir:

Applicant, Dr. Kent R. Van Kampen, hereby requests reconsideration of the dismissal, dated August 31, 2001, of the petition under 37 C.F.R. 1.47(a) that was filed by Applicant on July 27, 2001. Applicant submits the following statement, as well as the Renewed Petition For Filing By Other Than All The Inventors Under 37 C.F.R. 1.47 (a) and additional evidence, and Applicant hereby petitions the Commissioner to accept the filing of the above-identified U.S. Patent Application by other than all of the inventors.

The Commissioner identified four requirements of a grantable petition under 37 C.F.R. 1.47(a) in the Decision Dismissing Petition dated August 31, 2001, and the Commissioner indicated that Applicant's petition lacked the numbered requirements as set forth below:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the applications papers (specification, claims and drawings);  
(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; and  
(4) a statement of the last known address of the non-signing inventor.

As to item (1), Commissioner indicated that corroboration is required to prove that Kent Van Kampen sent a copy of the application to Mr. Edwards. Dr. Van Kampen is unable to recover any documentation to submit as corroborating evidence of his sworn statement.

Therefore, the undersigned, as Attorney for Applicant, sent an additional copy of the Declaration

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Adjustment date: 01/29/2002 AKELLEY 00000031 09689621 -135.00 CR  
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12/10/2001 STEFFERA 00000010 09689621 -65.00 CR  
01 FC:205

and patent application to Mr. Edwards on October 11, 2001 by Certified Mail – Return Receipt Requested. Documentation of proof of delivery of the certified mail is enclosed. Then, on October 18, 2001, yet another copy of the Declaration and patent application were sent to Mr. Edwards via Federal Express. Documentation showing proof of delivery of both Federal Express packages is also enclosed.

Mr. Edwards made an express written refusal to the undersigned on October 20, 2001 via an electronic mail message (attached to Amended Affidavit of Brian Laurenzo as Exhibit 4). The reasons given by Mr. Edwards for refusing to sign the Declaration include not receiving a telephone call from Dr. Van Kampen and the desire for indemnification and financial incentives. Mr. Edwards has not returned an executed Declaration despite the numerous attempts before and after October 11, 2001 made by Applicant and Applicant's Attorney to obtain a signed Declaration from Mr. Edwards.

The amended and newly executed affidavit of Brian Laurenzo, copies of the materials that evidence and corroborate Mr. Edward's refusal to join the patent application, and a copy of the previously submitted statement of Dr. Kent Van Kampen are enclosed for consideration in the present Request for Reconsideration and Renewed Petition For Filing By Other Than All The Inventors Under 37 C.F.R. 1.47 (a).

Applicant respectfully asserts that the requirement under MPEP 409.03 (d) has been satisfied. A bona fide attempt to present a copy of the application papers and the Oath and Declaration was made prior to the verbal refusal from Mr. Edwards to the undersigned on June 6, 2001 and prior to the filing of the original petition to proceed without one joint inventor. Additionally, Applicant respectfully asserts that the foregoing information and attached evidence is sufficient to show that additional bona fide attempts to present the application papers and Declaration were made on October 11, 2001 and October 18, 2001, prior to the written refusal to join the application by Mr. Edwards on October 20, 2001.

As to item (2), the Commissioner indicated that when an inventor refuses to sign the oath or declaration, the remaining inventor should sign the oath or declaration in his own name and on behalf of the non-signing inventor. Thus, the Oath and Declaration which are attached to a copy of the originally filed specification, signed by Dr. Van Kampen for himself and on behalf of Mr. Edwards, is hereby submitted.

As to item (4), the Commissioner indicated that the last known address of the non-signing inventor must be verified. The Commissioner pointed out that the petition states the last known address of Mr. Edwards to be Neotech, LLC, 10061 Hwy. 22, Dresden, TN 38225, while the copy of the letter from the undersigned to Mr. Edwards is otherwise addressed. Applicant respectfully submits that the last known addresses at which Mr. Edwards customarily receives mail are as follows:

Business Address:  
Mr. Bobby Edwards  
Neotech, LLC  
10061 Hwy. 22  
Dresden, TN 38225

Home Address:  
Mr. Bobby Edwards  
9930 Hwy. 22  
Dresden, TN 38225

Additional Home Address:  
Mr. Bobby Edwards  
19488 FM 2115  
Salado, TX 76571

The first copy of the patent application was sent by Dr. Van Kampen to Mr. Edwards at his last known business address, while the first Declaration was sent by the undersigned to Mr. Edwards at his last known home address. The second and third letters from the undersigned to Mr. Edwards, including additional copies of the patent application and Declaration, were sent to Mr. Edwards both at his home and business addresses.

Mr. Edwards has recently indicated, in his October 20, 2001 electronic message to the undersigned, that his home address is again in Texas. However, Dr. Van Kampen stated in his affidavit that, prior to April 25, 2001, he had attempted to contact Mr. Edwards in Texas and was under the impression that Mr. Edwards no longer lived in Texas. Additionally, on June 6, 2001, Mr. Edwards also told the undersigned that his old office was in Texas and to direct future communications to the office in Tennessee. Therefore, Applicant respectfully submits that Mr. Bobby Edwards does customarily receive mail at the two Tennessee addresses provided above, proof of which is Mr. Edwards' acknowledgement (in his October 20, 2001 electronic message) of receipt of the Federal Express packages, which were addressed to him in Dresden, Tennessee.

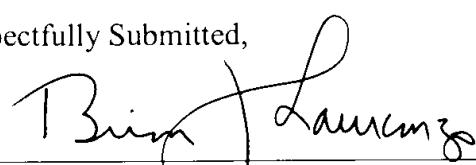
Applicant respectfully submits that the above statements and evidence, along with and in light of the evidence previously submitted, satisfy the requirements of 37 C.F.R. 1.47(a). Applicant respectfully requests that the Commissioner's dismissal of the petition be reconsidered and that the Petition under 37 C.F.R. 1.47 (a) be granted at this time. Alternatively, Applicant respectfully requests that the Commissioner grant the Renewed Petition under 37 C.F.R. 1.47(a) filed concurrently with this Request for Reconsideration.

The required fee pursuant to § 1.17 (h) is enclosed, along with the small entity surcharge for the filing of the Oath and Declaration by Dr. Kent Van Kampen.

Date: 10/25/01

Respectfully Submitted,

By:



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801 Grand Avenue  
Suite 3900  
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